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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's)
Rules to Ensure Compatibility)
with Enhanced 911 Emergency)
Calling Systems)

CC Docket No. 94-102

TO: Chief, Wireless Telecommunications Bureau

**Comments of Western Wireless Corporation and
VoiceStream Wireless Corporation**

I. Introduction

Western Wireless Corporation and VoiceStream Wireless Corporation ("Western/VoiceStream") hereby submit comments in response to the Wireless Enhanced 911 Report filed by CTIA, PCIA, APCO, NENA, and NASNA on August 9, 1999. On June 9, 1999, the Commission requested a report from those organizations describing the progress made in the implementation of "Phase I" wireless enhanced 911 services pursuant to the Report and Order in the Commission's docket 94-102 and section 20.18 of the rules. The report was filed on August 9, 1999.

Meeting the goals of the Report and Order is a complicated process requiring the cooperation and coordination of a wide range of entities and organizations. The process of meeting these goals typically involves the legislative adoption of state law, its approval by a governor, network engineering, routing of calls, interfacing with the ILEC, and the negotiation and execution of contracts between the wireless carrier, the ILEC, PSAPs and third party vendors. Any delay or failure in this process can result in significant delay in the implementation of E911 and, in many cases, a delay of several years.

The Commission's expressed concern over the slow deployment of E911 is justified. Western/VoiceStream is concerned about the slow pace of implementation as well. Delays are the result of many causes, however, and some changes in the implementation process could result in even further delay. Attempts to expedite the implementation of Phase I E911 could risk slowing the progress already achieved in some states and deterring efforts in those states that are just beginning the process.

II. Legislative Process

The initial obstacle in providing E911 service is the lack of cost recovery legislation signed into law in many states. Each state is at a different stage in this process. States such as Colorado, Oregon and Arizona have been successful in passing the laws necessary to allow carriers to recover their costs. The Legislatures of Washington and Hawaii worked very hard to pass legislation earlier this year, but, in the end, did not succeed. In Hawaii, E911 legislation

passed the Legislature, but was vetoed by the Governor. Legislatures in other states, such as New Mexico and Oklahoma, are in the early stages of discussing legislation they hope to submit next year. And states such as Kansas, Utah and Montana have done nothing to prepare E911 legislation.

Complicating matters is the fact that some state legislatures meet only every other year. This situation allows only a small window of opportunity for proponents of E911 legislation to be successful. Under such circumstances, minor complications can delay adoption of a cost recovery mechanism by two years. In some cases, there are competing versions of E911 legislation and the proponents are forced to oppose legislation that would appear to accomplish the Commission's E911 goals.

Passage of E911 legislation requires an intense lobbying effort on the part of supporters and can become complicated by political interests wholly unrelated to the issues surrounding E911. Wireless carriers often find themselves educating individual legislators on the need for E911 legislation. The issues can be confusing to legislators trying to discern the best method for facilitating public safety.

The legislative process is inherently a political process. Regardless of the legitimate public policy arguments that call for legislation, success is dependent on the political environment in each state. In today's conservative fiscal environment, state Legislatures often strongly oppose the creation of what they perceive to be new taxes on their constituents. Often, the E911 surcharge is viewed, not as a specific surcharge for the purpose of supporting a dedicated

purpose, but simply as another tax on the public. Legislators who have campaigned on platforms pledging not to support tax increases often are opposed to the E911 surcharge. This view of the surcharge as a tax also inspires activists to encourage their representatives to oppose E911 legislation. Other groups fear that implementation of the full E911 emergency system and Phase II location technology might encroach upon their rights of privacy. Still others simply do not value the need for a more developed 911 emergency system. Western/VoiceStream has found that all of these obstacles and groups substantially hinder the adoption of state-wide E911 legislation and, thus, the establishment of cost recovery mechanisms.

III. Implementation

Phase I E911 implementation requires technical, legal and logistical coordination among many entities. Once a cost recovery mechanism is in place, wireless carriers must coordinate their implementation efforts with county officials, PSAPs and the incumbent LEC. In every state, there are numerous organizations involved with the public safety emergency system. States such as Oregon operate their 911 system on a statewide basis with one coordinator overseeing the entire implementation process. But Oregon is an anomaly. States such as Colorado operate in just the opposite manner. Every county in Colorado makes its own determination as to the adoption of a surcharge, the technical aspects of E911, and the terms and conditions of agreements with wireless carriers. In Texas, the situation is even more complicated by the

involvement of multiple layers of local government, including Council of Governments, 911 Districts, and home rule cities. Many states have also organized task forces that become involved in the E911 implementation process.

As carriers deploy E911 in multiple states, along different layers of government and in unison with various groups, coordination becomes more difficult and confusing. As the layers of government process grow deeper, the deployment slows. No longer are there just 50 states involved in deploying E911; now there are potentially hundreds of participating entities, all seeking to impose their interests on the implementation of wireless E911.

The method of E911 deployment differs from state to state and the one-size-fits-all approach to E911 does not work. Western/VoiceStream must invent a unique approach to E911 implementation in each state. We must accept the fact that, when an obligation is delegated to the states, some delay and some idiosyncrasies will result. Western/VoiceStream accepts this fact and hopes that the Commission will accept it as a function of its delegation of authority for implementation to state and local governments.

IV. Interconnection with Incumbent LECs

One of the most forgotten aspects of E911 implementation is the interconnection with the incumbent Local Exchange Carrier (LEC). Without a relationship with the LEC, implementation cannot move forward. Negotiating that relationship with the LEC can sometimes take months or years. The wireless carrier has no recourse if agreement cannot be reached. Essentially, because all

calls must be processed through the monopoly LEC, the wireless carrier is held hostage to the leverage of the LEC. In Colorado, for instance, Western/VoiceStream has attempted to enter an agreement with US WEST Communications, Inc. ("US WEST") for many months. Western/VoiceStream is requesting reasonable language provisions that will allow Western/VoiceStream to monitor the regulatory approval of the E911 tariff and preserve the integrity of the contract in the event the tariff is not approved. So far, however, US WEST has refused to consider these reasonable provisions or propose alternatives. These important contract negotiations often result in further delay in E911 implementation.

The Commission requires carrier cost recovery and the agreement with the LEC is often the critical point of focus for cost recovery. Often, without a working contractual relationship, there is no entity responsibility for ensuring cost recovery. The contract frames the working relationship between the carrier, PSAP and the LEC.

It is convenient to assume that once a state has adopted a wireless E911 surcharge and is collecting substantial sums of money for the eventual reimbursement of carrier costs, that a cost recovery mechanism is in place. It is important, however, to distinguish between the collection of E911 funds and the redistribution of those funds to the carrier for cost reimbursement. Many states, such as Texas, have been collecting a surcharge from customers for years and have accumulated millions of dollars in the name of E911. But without a mechanism for distribution to carriers, typically an agreement with the PSAP or

ILEC, those funds do nothing to promote public safety and further the deployment of Phase I E911. These agreements are essential for the completion of the cost recovery mechanism.

V. Inconsistencies with FCC Objectives

In some states, E911 implementation has taken a departure from the directives of the Commission. Western/VoiceStream views E911 implementation as a logical, linear process, in which each phase must be completed before the next can begin. Some states, on the other hand, view E911 implementation as merely a means of obtaining the end goal: a sophisticated system for location identification. These states tend to approach Phase I of implementation as irrelevant and unnecessary because Phase II is their only objective. Phase II has become the trophy to be given to the carrier and/or PSAP that can implement it first. Phase II has become the golden apple of E911, for these states, to be achieved at all costs and as soon as possible. Arizona is one state that has repeatedly requested that Western/VoiceStream move directly to Phase II deployment, completely bypassing Phase I.

Western/VoiceStream does not disagree that Phase II will be a valuable, life-saving tool. But, the Commission recognized two important challenges. First, the location technology envisioned by Phase II was not yet available and it was unclear when it would be available. To date, there is still no reliable, commercially-available Phase II solution. Many have been tested, but none has been proven dependable for the level of accountability necessary in an E911

system. Second, the call routing and data transmission necessary for basic 911 and Phase I E911 are necessary building blocks for Phase II. Leap-frogging over Phase I will not accomplish the goals of the Commission as set forth in the Report and Order.

There also appears to be a practice developing among PSAPs whereby the PSAP requests Phase I E911 service only from the larger, incumbent wireless carriers. This discriminatory practice is biased against smaller, newer wireless carriers. The state of Oregon, for example, has requested service from AT&T Wireless Services and not from VoiceStream. Instead of issuing Phase I service requests to all carriers in a non-discriminatory fashion, some PSAPs target their requests at carriers that seem to fit certain cost recovery parameters or those that cover the population centers of the state. The apparent objective is to be able to claim that the state has implemented E911, when in fact the state has ignored thousands of customers. Although there does not appear to be a legal prohibition on this type of discrimination, it is yet another explanation for the lower than expected rate of implementation of wireless E911 throughout the states.

VI. Conclusion

The Commission has established an approach to wireless E911 implementation in the Report and Order. That approach essentially delegates authority for implementation to wireless carriers, PSAPs, ILECs, state agencies, and a widely disparate group of entities with an equally disparate set of

competing interests. The Commission's approach is a reasonable one, but one that requires some patience. Those who suggest that the delays in implementation stem from opposition by the wireless industry are incorrect. Western/VoiceStream and many other carriers have worked diligently to implement the Commission's goals. We feel strongly that our efforts have been swift, reasonable and in good faith. Western/VoiceStream encourages the Commission to maintain the current course of implementation. A change in course at this point could only serve to delay E911 implementation even further.

Respectfully submitted,

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